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SUPREME COURT, U S

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 762

GEORGIA POWER COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION, *et al.*,
Respondents.

REPLY BRIEF OF GEORGIA POWER COMPANY ON PETITION FOR CERTIORARI

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Of counsel.

Dated March 11, 1958.

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The briefs filed by the Federal Power Commission in opposition to the petition for a writ of certiorari herein, as well as in Nos. 782 and 697, indicate the most cogent reason why the writs should be granted. For it is clear from those briefs that the Commission wholly misconceives the basis of this Court's decision in *Sierra* that a rate fixed by contract can be set aside by the Commission only if it adversely affects the public interest: Despite this Court's decision that the rate involved in *Sierra* could not be set aside solely because the Commission deemed it "unreasonable" when measured by "the cost of service formula", the Commission insists upon applying that erroneous standard to the rate here in issue.

We submit that the Commission has overlooked the true basis of this Court's decision in *Sierra*: that in setting aside a rate fixed by contract the Commission is exercising the paramount power of the Government to set contracts aside, and that that power can be exercised only when the public interest so requires. If a contract providing for a special rate is "unreasonable" merely because the rate produces a return different from that which the Commission would approve by applying the "cost of service formula," there could be no such contracts.

Respectfully submitted,

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